REMARKS/ARGUMENTS

Claims 1 and 3-9 are pending.

Claims 1, 3-4 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0204579 to Lutz ("Lutz") in view of U.S. Paten No. 6,278,694 to Wolf et al. ("Wolf") in view of U.S. Patent No. 6,327,677 to Garg et al. ("Garg") and further in view of what was well known in the art.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz, Wolf and Garg, further in view of U.S. Patent No. 7,061,874 to Merugu et al. ("Merugu").

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz, Wolf, and Garg, further in view of U.S. Publication No. 2003/0033395 to Sato ("Sato").

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz, Wolf, and Garg, further in view of U.S. Patent No. 6,223,222 to Fijolek et al. ("Fijolek").

The claimed invention relates to a network measurement apparatus. A user provides, in a user request, a measurement type and path information. Using the path information and the measurement type as the only user-provided information, the network measurement apparatus identifies a network segment and a suitable measuring device. An aspect of the claimed invention is that the user needs only to specify in the user request the path (and the desired measurement to be made), and does not have to identify the specific measurement device(s). Another aspect of the invention is the inclusion of the path information in the user request and the use of that information to select a measurement device. Claim 1 has been amended to more clearly set forth these aspects of the invention:

> A network measurement configuration apparatus ...comprising,
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> a receiving means which receives a user request including path information between two terminals and a measurement type, wherein the user request does not include identification of a measurement device,
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> ...
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> a measurement device selecting means for specifying a network segment included in a path based on the path information ..., and selecting a measurement device from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected, wherein the measurement device selected is capable of measuring the specified network segment,

> is capable of making measurements relating to the measurement type included in the user request, and has capacity to make said measurements. (underlining added for emphasis)

An illustrative embodiment of the claimed "user request" is disclosed in the specification as published in U.S. Pub. No. 2005/0005004 at ¶[0036] . The service level does not include identification of a measurement device. An illustrative embodiment of "selecting a measurement device" is given in ¶[0077]. No new matter has been added.

1. "user request does not include identification of a measurement device"

Lutz does not teach a "user request does not include identification of a measurement device." The Office action asserted that Lutz' analyzer corresponds to the claimed "measurement device," citing ¶[0074, lies 30-32. *O. A., page 3.* Lutz clearly explains in ¶[0074], lines 17-22 that an analyzer selection page is displayed to the user, who then selects an analyzer from the selection page. Lutz, therefore, does not teach "a receiving means which receives a user request including path information between two terminals and a measurement type, wherein the user request does not include identification of a measurement device."

Garg likewise does not teach a "user request does not include identification of a measurement device." Garg discloses a system that monitors a network that includes collecting data from various devices in the network and generating an alarm if it determines there is a problem. A data collection module 30 (Fig. 2) collects data and feeds data to an analysis module 38. There is no user request to perform a measurement. The devices in Garg are always generating data by virtue of their normal operation; e.g., see column 4, lines 1-10). Garg, therefore, does not teach "a receiving means which receives a user request including path information between two terminals and a measurement type, wherein the user request does not include identification of a measurement device."

Wolf does not teach that a "user request does not include identification of a measurement device." Wolf is similar to Garg in that Wolf collects data from "probes" which are distributed throughout a network and monitor the network. Wolf collects data from each of the probes and identifies probes that produce the observer the most traffic as being “best probes.” Col. 1, lines 58-63. Accordingly, there is no user request to perform a measurement, since Wolf’s probes are always measuring. Wolf, therefore, does not teach “a receiving means which receives a user request including path information between two terminals and a measurement type, wherein the user request does not include identification of a measurement device.”

Accordingly, none of the cited references considered separately, or in combination teach, or even suggest, the claim limitation:

> a receiving means which receives a user request including path information between two terminals and a measurement type, wherein the user request does not include identification of a measurement device,

2. “means for ... selecting a measurement device from the plurality of measurement devices from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected”

As explained above, Lutz teaches that the user selects an analyzer, by way of an analyzer selection page that is presented to the user. However, Lutz clearly does not teach or even suggest “selecting a measurement device from the plurality of measurement devices from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected” for the very reason that the user request does not include identification of the measurement device.

As explained above, Garg’s data collector 30 simply collects data from all network devices. See column 2, lines 11-26. Garg processes the data and produces an alarm if the data indicates a problem in the network. Accordingly, there is no teaching (indeed, there is no reason) to select a measurement device based on a specified segment because all of Garg’s devices are accessed for data collection. Garg, therefore, does not teach “selecting a measurement device from the plurality of measurement devices from the plurality of measurement devices based on the specified network segment,” where the specified network segment is specified based on a user-provided path.

Wolf, likewise, does not teach "selecting a measurement device from the plurality of measurement devices from the plurality of measurement devices based on the specified network segment," where the specified network segment is specified based on a user-provided path. Like Garg, Wolf collects data from probes distributed throughout the network. As Wolf explains, he uses the collected data for "calculating the traffic observed by each probe between successive sampling times and apportioning the calculated traffic data among a single set of consecutive temporal intervals." *Col. 1, lines 41-45.* And like Garg, there is no teaching (indeed, there is no reason) to select a specific probe based on a specified segment because all of Wolf's probes are accessed for data collection.

Accordingly, none of the cited references considered separately, or in combination teach, or even suggest, the claim limitation:

> a measurement device selecting means for ... selecting a measurement device from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected, ...

3. "a user request including path information between two terminals" and "a measurement device selecting means for specifying a network segment included in a path based on the path information ..., and selecting a measurement device from the plurality of measurement devices based on the specified network segment"

The Office action correctly noted that neither Lutz nor Wolf teach a user request including path information, where the path information is used to select a segment, where the segment is used to select a measurement device. *O. A., bottom of page 4.*

The Office action argued that "the data collection module requests information, such as lost packets, on one or more data communications links on any number of network devices; it may be interpreted that if information is being collected on a link between a plurality of devices that path information must be known." *O. A., bottom of page 5.* However, such path information is not used to identify a segment in the network, and the segment is not used to identify a measurement device. Rather, data requests made by Garg's data collection modules are made directly to the device having the data[1], and so there is no need to use the path information to identify a segment and the using the segment to identify the measurement device (as recited in the claims) because Garg's data collection modules are already talking to the device having the data.

The Office action cited Garg at column 13, lines 19-22 and 30-32 for providing the missing teaching namely, network analyzer tools 122 for collection information. A review of column 13, lines 19-40 reveals a discussion of various network analyzer tools 122 to obtain additional information. In particular, lines 30-40 discuss tools that trace a path between devices. Such tools, though they involve path information, do not involve the selection of a measurement device based on a segment, where the segment is based on path information in a user request. Such tools, in fact, are the measurement devices themselves; for example, to test all devices between itself and a particular device. Such tools were not selected based on a network segment that was determined based on path information in a user request.

Garg, therefore, does not teach the claim elements:

> a receiving means which receives a user request including path information between two terminals and a measurement type, wherein the user request does not include identification of a measurement device,
>
> ...
>
> a measurement device selecting means for specifying a network segment included in a path based on the path information ..., and selecting a measurement device from the plurality of measurement devices based on the specified network segment.

Accordingly, Garg in combination with Lutz and Wolf fail to render obvious the claimed invention.

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[1] i.e., what is believed to be asserted by the Office action as corresponding to the claimed measurement device

4. Dependent Claims

Dependent claims 3-9 are believed to be patentable based on the patentability of their respective base claims.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

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